IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8604 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE B.C.PATEL
and
Hon'ble MR.JUSTICE JAYANT PATEL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

RABARI HIRA DEVA

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 8604 of 2000

MR KS JHAVERI for Petitioner No. 1

Ms.Manisha Lavkumar, AGP for Respondents No. 1-2

CORAM : MR.JUSTICE B.C.PATEL
and
MR.JUSTICE JAYANT PATEL

Date of decision: 21/02/2002

ORAL JUDGEMENT

(Per : MR.JUSTICE JAYANT PATEL)

This matter is placed before the Division Bench on account of the reference made by the learned single judge of this court (P.K.Sarkar,J) with the reasons recorded in the order, dated 18.10.2000. The question raised is as under:

"Whether the provisions of section 11 read with Rule 33 of the Gujarat Agricultural Produce Markets Act and the Rules made thereunder creates any obligation on the Authority to hold election of Chairman and Vice Chairman of the Agricultural Produce Markets Committee during the extended period of the term of the Committee?"

2. Before we proceed to examine the reference which is referred to this Bench, it may be stated that Mr.K.S.Zaveri, Ld.counsel for the petitioner had submitted before this court that the extended term of the Market Committee is already over, and therefore, the Chairman and Vice Chairman who continued to hold the office have also now ceased to be the Chairman and Vice Chairman of the Market Committee. Therefore, Mr.Zaveri submitted the present petition has become infructuous and it may not be required for the Division Bench of this court to examine the question. He also submitted that even if the Division Bench of this court wants to examine the question referred by the learned single judge, then, in his submission, the law laid down by the coordinate Bench in the matter of Kantilal Rajuram Thakkar vs Director, Agricultural Market Finance (Coram: R.C.Mankad,J) reported in 1988(1) GLR 376 had continued to hold the field for a period of about 12 years, and therefore, it is a precedent which should not be reversed by the Division Bench. Alternatively, Mr.Zaveri also submitted that even otherwise also, the principle laid down in the aforesaid case, i.e. Kantilal Thakkar (supra) by the learned single judge is a correct view and therefore the Division Bench may decide the matter accordingly.

3. However, on behalf of the State Government, the Ld.AGP submitted that since the question is of a very important nature so far as the State Government is concerned, the matter may not be disposed of by the Bench without deciding the question as if it has become infructuous on account of subsequent events, i.e. the term of Market Committee is over. The Ld.AGP has further submitted that in her view also the principle laid down

in the case of Kantilal Thakkar (supra) is a correct view. She further drew our decision of the another Ld.single judge of this court (R.Balia,J) in the matter of Thakore Sitaji Mohanji vs The District Registrar, Cooperative Societies & Deputy Director, Agricultural Marketing & Rural Finance, Mehsana reported in 1996(2) GLH 416 and submitted that the aforesaid decision had come up for consideration and the view expressed by another learned single judge (Coram: R.Balia,J) of this court is the same as per the view expressed in the matter of Kantilal Thakkar (Supra) by accepting the same.

4. We have heard the learned counsel appearing for the parties. We are of the view that the learned single judge of this court by order dated 18.10.2000 passed in this matter has referred the matter to the Larger Bench and when the stand of the State Government is also that the question should be decided by the Division Bench to make the position clear and the matter should not be disposed of as having become infructuous and it is necessary to decide the question.

5. Before we proceed to examine the question, it is necessary to consider the provisions of Sec.11(4) of Gujarat Agricultural Produce Market Committee, 1963 and Rule 31 of the Gujarat Agricultural Produce Market Rules, 1965. The statutory term of a Chairman and Vice Chairman of Market Committee is for a period of 2 years with the deeming fiction to continue to hold the office until the newly elected Chairman or Vice Chairman resume the office. The said provision can only be read to see that vacuum is not created in the office of the Chairman or Vice Chairman. After the amendment by way of insertion of Section 11(4)(aa) of the Act, term of the Market Committee, in any case, could not be extended beyond the period of one year after the expiry of statutory term of 4 years. As per the scheme of the Act the Chairman and the Vice Chairman are to be elected from amongst the duly elected members of the Market Committee. When the members are so elected, they are aware that their statutory term is for a period of four years. The election for Chairman and Vice Chairman is to be held for a period of two years and therefore any Chairman or Vice Chairman who is so elected from amongst the elected members is aware that his statutory term is for a period of two years. At the expiry of the term of members of the Market Committee it can not be read that the power to continue to hold the office will continue even after the expiry of the term as members of the Market Committee. As per the settled legal position in case of the election of the office bearers of any elected body term of such

office bearer would become co-extentive with the term of members of such elected body. If, normally, the statutory term of the elected member has expired it can not be said that the Chairman or the Vice Chairman so elected from amongst the elected members has right to continue beyond their normal term as the elected member of the Market. Not only that but even when the election of Chairman and Vice Chairman is held it is a matter known to the person so elected that his statutory term as Chairman or Vice Chairman is for a period of two years. The power to continue to hold the office by way of deeming fiction after the expiry of the statutory term can not be read as that of conferring any additional statutory right beyond the normal period of office. As a matter of fact, the intention of providing deeming fiction is only with a view to see that no vacuum is created or not to create a situation that no person in the office can take care of the administration and affairs of the Market Committee. However, when the period of one year of the existing elected members of the Market Committee is extended it can be said that the elected members of the Market Committee will continue to hold the office for a period of one year and once such an extension having been granted the same Market Committee continues of the elected body whose term is extended. Once the term is extended it is to be read in the manner that the term of the Chairman and Vice Chairman is not extended, but only the term of the elected persons of the Market Committee is extended. When Chairman and Vice Chairman were elected they were knowing that their normal statutory term is for a period of two years and therefore once the said period of two years is expired and on account of extension of normal term of the elected members of the Market Committee continues the post Chairman and the Vice Chairman would fall vacant, on the correct interpretation of the provisions of the Act read with Rules and therefore the election of Chairman and the Vice Chairman becomes due on the expiry of normal period of two years even though the term of elected members of the Market Committee is extended for a period of one year. Aforesaid interpretation appears to be more reasonable with a view to elect office bearers from amongst the members in as much where the Chairman and the Vice Chairman are elected knowing well that their normal statutory period is for a period of two years they can not be allowed to take undue benefit of deeming fiction. If such benefits are created it will leave room to the existing Chairman and Vice Chairman to continue in power without obtaining a fresh mandate from the elected members or the body which has elected them as Chairman and Vice Chairman.

6. Reference may also be made to the decision of the learned single judge of this court (R.C.Mankad,J) in case of Kantilal (Supra) wherein the view taken is that if the Committee continues to be in existence there is no reason why it should not elect Chairman and Vice Chairman as provided under Rules. The aforesaid view was also considered by another learned single judge of this court ion the matter of Thakore Sitaji Mohanji(supra) wherein at para 9 and 10 after considering the view expressed in the matter of Kantilal(supra) the learned single judge has agreed with the view expressed in the matter of Kantilal (supra).

7. We are also of the view that the view expressed by the learned single judge in case of Kantilal (supra) is a correct view and the same is with a view to maintain the correct democratic principles also.

8. Therefore, we answer the question in affirmative by holding that Section 11 of the Act and Rule 33 creates an obligation on the authority to hold the election of Chairman and Vice Chairman of the Market Committee during the extended period of the term of the market committee. The question referred by the learned single judge is answered accordingly.

9. At this stage Mr.Zaveri has contended that since the extended term of the Market Committee is already over now there is no question of holding the election of Chairman and Vice Chairman and no useful purpose would be served by passing further orders in the petition and therefore we dispose of the main special civil application as having become infructuous. Rule is discharged. There shall be no order as to costs.

21.2.2002 (B.C.PATEL,J) (JAYANT PATEL,J)